

CIVIL REVISION APPLICATION NO. 1174 OF 1996.

Date of decision: 18.2.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. N.A. Pandya, advocate for the petitioner.

Mr. S.B. Raval for Mr. R.M. Shah, advocate, for respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain,J.

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February 18, 1997.

Oral judgment:

Rule. Mr. S.B. Raval for Mr. Shah waives service of rule on behalf of the respondent.

The petitioner/ judgment debtor preferred application Ex.30 for amendment to the objections filed to the Darkhast Proceedings No.12 of 1992. The objections filed initially were placed on record at Ex.18. It appears

that by proposed amendment the judgment debtor wanted to take some plea but the same has been rejected by the court below vide order dated 6.7.1996. In my view, the court below has taken a hyper-technical view in not granting the proposed amendment brought vide Ex.30. As a cardinal rule by proposed amendment a party can take inconsistent plea or alternative defence. In this case the judgment debtor wanted to take plea that because of some development the land in question cannot be sold and consequently will have effect upon the maintainability of execution proceedings. Merely because amendment in the nature of taking particular plea is to be allowed does not mean that is to be accepted by the court because the validity of the contention would depend upon the evidence to be adduced and appreciation thereof by the court. Hence, in the facts of this case, the application deserves to be allowed.

In the result, the order passed by the court below, below Ex.30, is hereby quashed and set aside. The proposed amendment is allowed and is ordered to be carried out within two weeks from the date of receipt of writ of this court. Since the execution proceedings are of the year 1992 the court below is directed to expedite hearing and dispose of the same as expeditiously as possible. Rule is made absolute to the aforesaid extent with no order as to costs.